

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 10, 2013 at 10:00 a.m.

1. [13-91614-E-7](#) SABRINA AFIFI MOTION FOR RELIEF FROM
 ADR-1 Pro Se AUTOMATIC STAY
 9-10-13 [[13](#)]

KENNETH PANG VS.
CASE DISMISSED 9/16/13

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Kenneth Pang ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1117 Van Gogh Lane, Patterson, California. The moving party has provided the Declaration of Lisa Sanchez, property manager, to introduce evidence which establishes that the Debtor is not the owner of the property. Debtor is a tenant at sufferance, whose lawful right to live at the resident was terminated by serving the Debtor with Three Day Notice to Pay Rent or Quit, which expired on July 3, 2013.

The court shall issue a minute order terminating and vacating the automatic stay to allow Kenneth Pang, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real

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property commonly known as 1117 Van Gogh Lane, Patterson, California including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Kenneth Pang and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1117 Van Gogh Lane, Patterson, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

2. [13-91315](#)-E-7 APPLGATE JOHNSTON, INC.
VVF-1 George C. Hollister

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-5-13 [[101](#)]

AMERICAN HONDA FINANCE
CORPORATION VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Attorney for the Chapter 7 Trustee, and Office of the United States Trustee on September 5, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Honda Civic, VIN ending in 10144. The moving party has provided the Declaration of Amber Rocha to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rocha Declaration states that the Debtor has not made 1 post-petition payment, with a total of \$361.48 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$14,678.91, as stated in the Rocha Declaration. The Debtors do not list the vehicle clearly in their schedules. Although, the court found the vehicle (by description and VIN) in Exhibit B-25 to Chapter 7 Bankruptcy Schedules, Dckt. 40, page 7 of 13, stating it was sold to Bill Sloan for \$20,451.32 on some unstated date.

The Rocha Declaration also seeks to introduce evidence establishing the value of the asset at \$12,750.00 based on NADA Official Used Car Guide. The court finds this evidence credible as to the value of the car.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow American Honda Finance Corporation, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow American Honda Finance Corporation, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Honda Civic, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

3. [13-91458](#)-E-7 BETTY JONES MOTION FOR RELIEF FROM
 MBB-1 Thomas O. Gillis AUTOMATIC STAY
 9-12-13 [[10](#)]

UNION BANK, N.A. VS.

Final Ruling: The Creditor having filed a Withdrawal of the Motion for Relief from Automatic Stay, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion for Relief from Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

4. [13-91459](#)-E-11 LIMA BROTHERS DAIRY MOTION FOR RELIEF FROM
 WJS-1 David C. Johnston AUTOMATIC STAY
 9-26-13 [[34](#)]

AMERICAN AGCREDIT, PCA VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the

court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

American AgCredit, PCA ("Movant") seeks relief from the automatic stay with respect to an asset identified as the Dairy Herd and milk pool quota. The moving party has provided the Declarations of Teresa Rose, Eric Capron, and Steve Gallichio to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1), as cause exists because there is a potential for damage to the dairy herd from insufficient feed.

The Rose Declaration states that Debtor had borrowed total of \$2,561,128.14 from Movant. There have been post-petition payments received by milk check assignment, which may serve to decrease the total debt slightly.

The Capron Declaration states that Debtor had approximately 60 days of feed on hand on August 20, 2013. However, supplements needed to be purchased to generate feed mix with appropriate nutrition level (estimated cost of \$50,000). As of September 4, 2013, Debtor has failed to file a motion to appoint a broker to liquidate the herd.

The Gallichio Declaration states that he performed a Dairy Valuation. He found that additional feed will need to be purchased. Also, the Debtor did not have supplements such as oat hay, straw or corn stalks for supplements with alfalfa. There are 3,403 animals which he valued at \$2,880,500.

Movant argues that it has been in contact with Debtor's Counsel and understood that the herd would be sold, but no motion to sell has been brought forward and then the September 11, 2013 status report by the Debtor also stated that Debtor expected to employ a broker to sell its livestock. However, no such motion has been filed to date.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

A bankruptcy court "shall" lift the automatic stay "for cause." 11 U.S.C. § 362(d)(1). "Cause" has no clear definition and is determined on a case-by-case basis. *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The party moving for relief from stay has initial burden of coming forward with prima facie evidence showing that cause exists for granting such relief. 11 U.S.C. § 362.

Here, Movant has shown a potential for damage to the dairy herd collateral from insufficient feed. It appears from the status conference that Debtor-in-Possession intends to sell the herd or a portion of the herd. However, no such motion appears on the docket to date. If there is not action by the Debtor, the herd will be damaged and Movant will be prejudiced. Therefore, cause exists for relief from the automatic stay.

The court shall issue a minute order terminating and vacating the automatic stay to allow American AgCredit, PCA, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow American AgCredit, PCA, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a Dairy Herd and milk pool quota, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

No other or additional relief is granted.

5. [12-92790-E-7](#) CATHERINE TRIPP
DT-1 Jessica A. Dorn

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-11-13 [[21](#)]

WESTAMERICA BANK VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Attorney for Chapter 7 Trustee and Office of the United States Trustee on September 11, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Westamerica Bank seeks relief from the automatic stay with respect to the real property commonly known as 2101-2111 O Street, Merced, California. The moving party has provided the Declaration of Rhonda Speelman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Speelman Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$16,179.27 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$802,982.91 secured by movant's first trust deed, as stated in the Speelman Declaration, while the value of the property is determined to be \$630,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d) (2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g) (2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on February 11, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c) (2) (C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Westamerica Bank, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property. No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Westamerica Bank, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2101-2111 O Street, Merced, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c) (2) (C).

No other or additional relief is granted.